"in trust" or "to trustees" as controlling, though in *Norman* v. *Prince, supra*, it is denied that they are significant), and that the trust is not charitable, the fact that there is no beneficiary who can enforce the trust has caused most courts to allow it to fail. *Morice* v. *Bishop of Durham, supra*. Where, however, the trustee is willing to act in such cases, there would seem to be no reason for refusing to permit him to effectuate the intention of the testator. *Re Gibbon* [1917], 1 I. R. 448. For arguments on both sides of this question see 5 HARV. L. REV. 389 and 15 HARV. L. REV. 509.

WORKMEN'S COMPENSATION—ACCIDENT ARISING OUT OF EMPLOYMENT—SPORTIVE ACT OF CO-EMPLOYEE.—Where an employee while devoting his time to his work was struck in the eye by an apple thrown by a fellow servant engaged in horseplay, it was *held* that the injury was one "arising out of and in the course of his employment," within the Workmen's Compensation Law. *Leonbruno* v. *Champlain Silk Mills* (N. Y., 1920), 128 N. E. 711.

The general rule under the English Workmen's Compensation Act is that an employee who is injured while "larking" or while in the performance of some sportive act cannot recover, for the reason that the injuries are not regarded as arising out of the employment. *Fitzgerald* v. *Clarke & Son* [1908], 2 K. B. 796; *Wilson* v. *Laing* [1909], Court of Session, 1230; *Wrigley* v. *Nasmyth, Wilson & Co.* [1913], W. C. & Ins. Rep. 145. To the same effect are most of the American decisions. *Thompson* v. *Employers' Liability Assur. Corp., Ltd.*, 2 Mass. W. C. C. 145; *Matter of Stillwagon* v. *Callan Bros.*, 224 N. Y. 714; *In re Zelavzmi*, 1 Ohio Ind. Comm. Bull. (No. 7) 87, (No. 48427, 1914), 8 N. C. C. A. 286; *Payne* v. *Industrial Comn.* (Ill., 1920), 129 N. E. 122. The reason for refusing the award is that the claimant has, by himself engaging in the horseplay, suspended his work and temporarily stepped outside his employment. The New Jersey court has gone even farther by declaring that the employer is not liable for an injury due to horseplay "whether the injured party instigated the occurrence or took no part in it; for, while an accident happening in such circumstances may arise in the course of, it cannot be said to arise out of, the employment." *Hulley* v. *Moosbrugger*, 88 N. J. L. 161. To the same effect, see also the two Michigan cases of *In re Boelema* and *Ratkowski* v. *Am. Car. & Foundry Co.*, 5 N. C. C. A. 798. The principal case, in drawing the line between those cases in which the claimant did and those in which he did not take part in the sportive acts which resulted in the injury, has the support of a number of decisions, both American and English. *Knopp* v. *Am. Car & Foundry Co.*, 186 Ill. App. 605; *Pekin Cooperage Co.* v. *Industrial Board*, 277 Ill. 53; *In re Mack*, 1 Ohio Ind. Comm. Bull. (No. 7) 120 (No. 37914, 1914); *Shaw* v. *Macfarlane*, 52 Sc. L. R. 236. The extension of the operation of the Workmen's Compensation Acts to the latter class of cases may, perhaps, be justified upon the ground that these statutes are remedial and should be broadly interpreted. *Moore* v. *Lehigh Valley Ry. Co.*, 154 N. Y. S. 620. But, even so, the reasoning in the principal case to the effect that the injury arises out of the business because skylarking among the employees is "something

reasonably to be expected" proves rather too much. Followed to its logical conclusion, this argument would destroy the very distinction sought to be established, and would lead to allowing the claim even in a case where the injured employee was himself taking part in the sportive acts which resulted in his injury. For a note on the general subject of accidents "arising out of" employment, see 16 MICH. L. REV. 179.

WORKMEN'S COMPENSATION ACT—COMPENSATION FOR INJURY AGGRAVATING A LATENT DISEASE.—P, an apparently able-bodied young man, in starting a gas engine caught his foot, which was lacerated, and fell in a faint. He lost the use of his legs. Medical testimony showed he was suffering from multiple sclerosis, hardening of the brain. Also that this disease was hereditary or caused by acute infection; that any shock or excitement would aggravate the disease and bring on the present condition of disability. In an action for compensation, *held,* the injury precipitated the present condition of P and is fully responsible therefor. P is entitled to compensation for total incapacity for life. *Blackburn* v. *Coffeyville Vitrified Brick and Tile Co.* (Kan., 1920), 193 Pac. 351.

The Compensation Acts, generally speaking, impose a liability on the employer for any accidental injuries to his employees arising out of the employment. HONNOLD, WORKMEN'S COMPENSATION, § 4. The question arises as to what constitutes an accidental or personal injury within the meaning of the acts. Often the incapacity from which the employee suffers or which causes his death is the immediate result of a disease. Then the problem is to determine whether the disease is to be considered as the proximate result of an accident so as to make the Compensation Act applicable. In cases like the principal case, where the disease from which the employee was suffering or died was aggravated or accelerated by the accident, compensation is awarded on the theory that the accident was the proximate cause of the disability or death. Thus where an employee accidentally fell, and testimony showed that the injury aroused latent tuberculosis, accelerated the disease and caused death earlier than otherwise, compensation was given for death. *Retmier* v. *Cruse* (Ind.), 119 N. E. 32; *Van Keuren* v. *Dwight Divine & Sons,* 165 N. Y. Supp. 1049; see cases cited in 15 N. C. C. A. 632 and 17 N. C. C. A. 864. The accident aggravating the disease may be undue excitement or strain in the course of employment. Thus, where a night watchman died after the excitement of a fire in the plant, it was found he had a weak heart. The court, in reversing the decision of the Accident Board denying compensation, said: "The fact that the man's condition predisposed him to such an accident or stroke must be, under the authorities, held to be immaterial. While the exertion and excitement which accelerated the heart action were not the sole proximate cause of the death, they were certainly concurring causes. *Schroetke* v. *Jackson-Church Co.,* 193 Mich. 616. So also, where a miner who was pushing a coal car up a grade suddenly complained of his side and died shortly, the evidence showing that his heart was diseased and that the strain caused a rupture of the heart resulting in death, the court